IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.92 OF 2005

M/s Erek Lites ... Petitioners

v/s

Makers Development Services Pvt.Ltd. ... Respondents

Mr C.G. Gavnekar i/b Mr G.S. Hiranandani for Petitioners.

Mr P.K. Samdani with Ms Rohini Shelke i/b M/s Humranwala and Co. for Respondents.

CORAM : D.K.DESHMUKH J.

DATE : 4TH APRIL 2005

P.C.: -

1. By this petition, the petitioners challenge the award dated 15th December 2004 made by the Sole Arbitrator rejecting the claims submitted by the petitioners. The first submission is that in the written statement, it was admitted that the letter of credit was opened for an amount in excess of Rs.17,00,000/- for making payment to the petitioners. It is further stated in the written statement that on the petitioners submitting invoices, an amount of Rs.15,53,380/- was paid. Thus, even according to the respondents, an amount of about Rs.2,00,000/- was due to the petitioners, but the learned Arbitrator has not made any award in relation to that amount. It is however to be seen that the case of the respondents is that the letter of credit was opened for making payment to the petitioners for an amount in excess of Rs.17,00,000/- and the payment was released on the basis of invoices submitted by the petitioners. The petitioners submitted three invoices for Rs.15,53,380/- and that amount was paid to them. As the petitioners did not submit invoices for the balance amount, it was not paid. The learned counsel appearing for petitioners submits that it was not the practice to issue invoice and the three

invoices were submitted because the respondents had asked for the same. In my opinion, the submission is not well founded. By submitting three invoices and receiving payment thereafter, a practice was established that for releasing payment, submission of invoice is necessary. I do not find any explanation given as to why invoice of further amount was not submitted. Thus, I do not find any patent error committed by the learned Arbitrator in this regard.

2. The second submission is that though by letter dated 1st December 1984, liability in excess of Rs.35,00,000/- was admitted by the respondents and though zerox copy of that letter was produced on record by the witness of the petitioners and though no oral evidence was led on behalf of the respondents, the learned Arbitrator has not relied on that letter. Now, it is to be seen that in paragraph 8 of the plaint that was filed in this Court, it was the case of the petitioners themselves that the letter dated 1st December 1984 was given for name sake and was not to be relied on. That paragraph in the plaint was put to the witness examined on behalf of the petitioners. In this regard, question Nos.60 and 61 are relevant which read thus :-

"60. (Attention of the witness is drawn on

page 5 paragraph 8 of the plaint which reads as under :-

'Abovesaid letter was given pursuant to the understanding arrived between the Plaintiffs and the Defendants as aforesaid and in particularly Mr M.L. Ogale who gave understanding to the Plaintiffs that the said letter was arrived at for the name sake only. Hereto annexed and marked Exh.'G' is copy of the said letter dated 1.12.84.'

Ques. Is this statement according to you correct ?

Ans. The above statement is correct.

61. I gave this letter according to the requirement of Mr Ogale. After going through the contents of paragraph 8 of the plaint I say that the letter was given for name sake, the same was not to be acted upon."

. It is clear from what is quoted above that even according to the petitioners, the letter dated 1st December 1984 was not to be acted upon and therefore, in my opinion, the learned Arbitrator has correctly refused

to rely on that letter for making an award against the respondents and in favour of the petitioners. Taking overall view of the matter therefore, in my opinion, the entire award turns on appreciation of evidence on record, both oral and documentary and as I find that the view taken by the learned Arbitrator is a view possible to be taken on the basis of appreciation of evidence on record, in the limited jurisdiction of this Court under section 34 of the Arbitration and Conciliation Act 1996, the award cannot be disturbed. The petition is disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.